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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-fifth session
Agenda item 4

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH
THE SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by International Fellowship of Reconciliation, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is distributed in accordance with Economic and Social Council resolution 1296 (XLIV).

[23 August 1993]

Compensation for victims of human rights violations

1. In 1859, while travelling through the war-ravaged plains of Lombardy, Henry Dunant arrived in the vicinity of Solferino, just after a terrible battle. He was horrified to see thousands of wounded soldiers abandoned without care and facing certain death. The idea of the Red Cross was born from that dreadful sight. In 1898, at The Hague, the representatives of 26 countries came together to discuss what rules should be implemented to care for the wounded and sick in the armed forces in the field and the wounded, sick and shipwrecked members of armed forces afloat. The four Geneva Conventions of 12 August 1949 are an outgrowth of humanitarian law started at The Hague. On 10 December 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights.

2. These three events are milestones in the development of human rights. What they have in common is that the initiative-takers put down in writing some of the rights which belong to human beings. As far back as mankind can remember, there have been basic rules for conduct. Abuse of these rules was never tolerated.

3. In keeping with the classic Roman civil law system, procedures have been developed to compensate wrongs done to members of society. The existence of these procedures have never been under question in peace-time conditions. However, during wartime, everything seems to be different. Victorious soldiers looted, raped, burned down dwellings, took away properties. This was accepted because it was war. It was in the nineteenth century that attitudes changed. The poor, the innocent, the disabled, the defeated - all were considered human beings, and therefore they had certain rights.

4. Thus it was a very significant initiative of the Sub-Commission in 1989 to entrust to Professor Theo van Boven the task of undertaking a study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. If humanity wants to take human rights seriously, then the matter of compensation, seen from an international point of view, is an unbreakable part of it. Human rights in the sense of international humanitarian law, without the subject of compensation, restitution and rehabilitation, is like an uncompleted building.

5. The final report of Professor van Boven (E/CN.4/Sub.2/1993/8) is not the end of the line. It is the very beginning of something as essential as the Universal Declaration of Human Rights. Regretfully, the van Boven study was born out of all the cases of gross violation of human rights committed during war and war-like situations. Ever since the Second World War, the world has seen combat, subversive actions and war. Hundreds of thousands of people have been victimized, displaced from their own grounds, forced to slavery-like labour, raped and murdered. The atrocities they have undergone still leave their marks, physically or psychologically.

6. Professor van Boven has laid down in his study the principles and guidelines along which reparation should be obtained. The principle of State responsibility, as explained in his final report, is a solid base from where to start. As one reads what principles and guidelines have been set down in the final section of the report, one cannot but agree that almost all of those can only be implemented by the State. In this aspect we wish to draw attention to the view laid down in paragraph 133. The matter of reparation should be taken out of the hands of national authorities. Therefore, an international independent body with the power to arbitrate should be nominated to deal with this problem.

7. International arbitration is a very delicate and complicated matter. National juridical systems form a part of State sovereignty. Suggesting that an international independent body act on behalf of nationals of another State or on behalf of stateless persons will conflict directly with State sovereignty. Yet one should not be driven away from facing difficult problems. One is obliged to see that the installation of such an international independent body is not the only question. Apart from

instituting such a body, procedures acceptable to all participating States must be drawn up, conflicting juridical aspects must be solved, evidence based upon facts must be incorporated. Therefore, one can see the enormous amount of work that lies ahead.

8. Several non-governmental organizations have mentioned the living victims of the Second World War, in particular those who suffered under the Imperial Japanese forces in Asia. Among them are Koreans, Filipinos, Indonesians, Dutch and other Western nationals. They are in their sixties and seventies now. As Professor van Boven said, while presenting his report to the Sub-Commission, "It is my sincere hope that the Sub-Commission will actively pursue the imperative requirements of justice, that victims receive the type and amount of reparations that is due to them."

9. It seems fortunate that, after nearly half a century, the new Japanese Prime Minister, Mr. Hosokawa, recently expressed his view that the war of Imperial Japan was an "aggressive war".

10. We suggest to the Sub-Commission the following four measures:

(a) To adopt the report on compensation for victims of gross violations of human rights;

(b) To recommend that a working group be appointed to undertake the drafting of a fundamental structure for an international independent body to deal with compensation;

(c) To appoint a special rapporteur to undertake an in-depth study of slavery-like practices and systematic rape during wartime, going back to well before the commencement of the Second World War and including internal war;

(d) To request such a special rapporteur to submit a preliminary report to the next session of the Sub-Commission.